

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA**

In the Matter of:)	
)	R9-2001-10
Alliance Colton LLC)	
)	Administrative Order on Consent
Drews and Century Substations)	42 U.S.C. §7413(a)(1), (4)
_____)	

I. Findings of Fact:

WHEREAS, on January 17, 2001, Governor Davis of the State of California proclaimed a State of Emergency due to the shortage of electricity in California and beginning on February 8, 2001, issued Executive Orders (the “Executive Orders”), directing the California regulatory authorities to implement numerous actions designed to increase the generation of electricity in California;

WHEREAS, Executive Order D-24-01 signed on February 8, 2001, directed the California Air Resources Board (“ARB”) to modify permit limits that could limit electricity generation;

WHEREAS, Executive Orders D-26 signed on February 8th and D-28-01 signed on March 8, 2001, directed the California Energy Commission (“CEC”) and expedite the processing of applications for power plants that can be on line by September 30, 2001;

WHEREAS, Alliance Colton LLC (“Alliance”) filed an emergency application for certification with the CEC on March 21, 2001, for a 40 MW power plant consisting of 4 GE 10B1 simple cycle natural gas turbines to be located at 559 South Pepper Avenue, Colton, California (the “Drews Project”), and a second 40 MW power plant consisting of 4 GE 10B1 simple cycle natural gas turbines to be located at 661 South Cooley Drive,

Colton, California (the “Century Project”). Both facilities will be sited within the existing substation footprint;

WHEREAS, in March 2001, Alliance filed applications for New Source Review (“NSR”) Authority To Construct Permits (“ATCs”) from the South Coast Air Quality Management District (“SCAQMD”) to allow the construction and operation of both the Drews and Century Projects;

WHEREAS, on or about March 28, 2001, the SCAQMD issued notices of intent to issue ATCs for the Drews and Century Projects, which initiated a 30-day public comment period;

WHEREAS, the proposed ATCs require the Drews and Century Projects to install and operate pollution control systems to limit emissions of oxides of nitrogen (“NOX”) to a concentration of 5 ppm or lower to satisfy LAER/CA-BACT, and Alliance expects to install selective catalytic reduction (“SCR”), or XONON (a catalytic combustion process) that will likely achieve a much lower NOX concentration than 5 ppm;

WHEREAS, Alliance has indicated that its agreement with the California Department of Water Resources includes conditions for the Drews and Century Projects to be on line by the target date of August 1, 2001, and Alliance has represented that it must begin actual construction on the Drews and Century Projects immediately in order to meet the on line date of August 1, 2001;

WHEREAS, Alliance has demonstrated to the SCAQMD that it cannot determine if SCR or XONON is the appropriate technology until May 1, 2001, and that Alliance cannot install and operate SCR or XONON technology before August 1, 2001;

WHEREAS, SCAQMD has filed a Petition for a Stipulated Order of Abatement

to allow Alliance to operate the Drews and Century Projects without LAER/CA-BACT until but no later than December 15, 2001, and SCAQMD and Alliance intend to enter into an agreement under which Alliance will pay a penalty to SCAQMD based in part on NOX emissions that exceed the rate for LAER/CA-BACT;

WHEREAS, the CEC certified the Drews and Century Projects on or about April 25, 2001;

WHEREAS, the Clean Air Act, 42 U.S.C. § 7401 et seq. (the “Act”), as implemented through 40 C.F.R. §§ 51.160 - 51.165, requires that the SCAQMD State Implementation Plan (“SIP”), contain regulations applicable to the construction and modification of “major stationary sources,” including the prohibition that a “major stationary source” may not begin actual construction without first obtaining a permit to construct;

WHEREAS, the SIP requires that no person may “build, erect, install, alter or replace any equipment, the use of which may cause the issuance of air contaminants or the use of which may eliminate, reduce or control the issuance of air contaminants without first obtaining written authorization [an ATC] for such construction from the Executive Officer” (SCAQMD Rule 201), and that the ATC include requirements for LAER/CA-BACT and offsets (SCAQMD Rule 1302);

WHEREAS, the Act and SIP also require any person who operates a stationary source that emits air pollutants to comply with the conditions of the ATC at all times, including but not limited to operating in compliance with LAER/CA-BACT limits;

WHEREAS, the Drews and Century Projects are subject to the federal and state NSR permitting provisions discussed above;

WHEREAS, the SCAQMD will not be able to issue final ATCs that fully comply with the NSR provisions of the SIP to Alliance for the Drews and Century Projects until after April 29, 2001;

WHEREAS, the Drews and Century Projects are not allowed to commence operation under this Order without having received final ATCs from the SCAQMD;

WHEREAS, Alliance has indicated that due to the above stated reasons, it will not be able to meet a LAER/CA-BACT limit of 5 ppm for approximately 4 to 5 months after beginning commercial operation;

WHEREAS, California has indicated that immediate construction and operation of the Drews and Century Projects will help reduce blackouts and other adverse consequences of the energy supply emergency in the state, as demonstrated by Governor Davis' Executive Orders and in the CEC decision to certify the Drews and Century Projects;

WHEREAS, the SCAQMD has determined that the additional NOX emissions that may be emitted by the turbines at the Drews and Century Projects for the duration of this Order are unlikely to cause any air pollution standards to be exceeded or cause any significant impact on public health because the SCAQMD and ARB anticipate providing offsets for all net emission increases of NOX during that period of operation;

WHEREAS, the United States Environmental Protection Agency, Region 9 ("EPA"), ARB, and Alliance (collectively designated as the "Parties") agree that in order to alleviate the current energy generation shortage and to avoid potential blackouts in California, this Order is in the public interest; and

WHEREAS, Alliance represents that its purpose in entering into this Order and

beginning actual construction of the Drews and Century Substation before receiving final ATCs, and in operating at levels above the LAER/CA-BACT limits in the ATCs for a 4 to 5 month period, is to assist the State of California in meeting the Governor's objective to provide additional electricity for California by the target date of August 1, 2001.

NOW, THEREFORE, the Parties agree that:

II. Definitions

Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Act, and the regulations promulgated thereunder, and in the SIP. In addition, the following definitions shall apply to the terms contained within this Order:

1. "LAER/CA-BACT" shall mean the Lowest Achievable Emission Rate, as defined by Section 173 of the Act, and regulations located at 40 C.F.R.

§51.165(a)(1)(xiii), and California BACT as defined in SCAQMD Rule 1302.

2. "Day" or "day" shall mean a calendar day;

3. "Effective Date" shall mean the last date this Order was signed by the Parties;

4. "Effective Period" shall mean the period starting the Effective Date and ending the Termination Date;

5. "Alliance" shall mean Alliance Colton LLC and its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such;

6. "Order" shall mean this Administrative Order on Consent.

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III. Conclusions of Law:

1. Authority to Issue Order

EPA has the authority to enter into this Order pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Section 113(a)(1), (4) grants the Administrator of EPA the authority to make findings of violation and to issue orders requiring persons in violation of the Act to come into compliance. This authority has been delegated to the Regional Administrator, EPA, Region 9 and redelegated to the Director, Air Division, EPA, Region 9.

By entering into this Order, the Parties agree that EPA is providing adequate notice of EPA's allegation that Alliance will be in violation of the SIP if it begins actual construction before Alliance receives final ATCs, and if Alliance emits NOX at levels above those permitted by the final ATCs. Alliance has not admitted that it is in violation of any requirement of the Act or SIP.

2. Applicability and Binding Effect

This Order shall apply to and be binding upon the EPA, ARB and Alliance, its successors and assigns, and its officers, directors, employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in FRCP 65(d).

During the Effective Period of this Order, Alliance shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of ownership of any portion of the Drews or Century Projects, any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Drews or Century Projects. Alliance shall condition any transfer, in whole or in part, of ownership, operation, or other interest of the Drews or Century Projects upon acceptance

by the transferee of the terms and conditions of this Order. Simultaneously with such notice, Alliance shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Alliance shall not be released from the obligations or liabilities of this Order unless EPA has approved the release of said obligations or liabilities.

IV. Order To Comply:

Pursuant to Section 113(a)(1), (4) of the Act, 42 U.S.C. §7413(a)(1), (4), the Director of the Air Division, Region 9, hereby issues this Order requiring Alliance to comply with the following terms and conditions while this Order is in effect:

1. Any construction of the Drews or Century Projects undertaken during the Effective Period of this Order shall be consistent with the draft ATCs prepared by the SCAQMD and noticed for public comment on March 29, 2001, including but not limited to installation of XONON or SCR to satisfy a NOX concentration limit of 5 ppm or lower as LAER/CA-BACT;

2. The LAER/CA-BACT analysis for the Drews or Century Projects by the regulatory agencies shall be conducted as it would be for any proposed project and shall not be prejudiced by the fact that Alliance will have begun construction of the Drews and Century Projects pursuant to this Order;

3. Prior to operation of the Drews and Century Projects, Alliance shall comply with all applicable SCAQMD offset and RECLAIM RTC requirements;

4. Alliance shall notify EPA and ARB within five business days of its receipt of final ATCs for the Drews and Century Projects from the SCAQMD.

5. Alliance may commence operating the Drews and Century Projects only after receiving final ATCs from SCAQMD, but prior to installation of LAER/CA-BACT provided Alliance meets the following conditions:

- a. On or before May 1, 2001, Alliance shall complete its determination of whether to install XONON or SCR to achieve a NOX concentration rate of 5 ppm or lower, and shall submit the determination to SCAQMD, ARB and EPA;
- b. By no later than December 15, 2001, Alliance shall have installed on each turbine XONON or SCR as approved by SCAQMD pursuant to Paragraph IV.5.a.
- c. On or before September 15, 2001, Alliance shall submit to SCAQMD, EPA and ARB, a status report showing that it will be in compliance with the LAER/CA-BACT rate in its final ATCs no later than December 15, 2001.

V. General Provisions:

1. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by the Parties.

2. Each undersigned representatives of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute this document.

3. Unless this Order states otherwise, whenever, under the terms of this Order, written notice is required to be given, or a report or other document is required to be sent

by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

4. The following addresses shall be used for notices and submissions required by this Order:

As to EPA:

Director, Air Division
U. S. E. P. A.
75 Hawthorne Street (AIR-1)
San Francisco, California 94105

As to Alliance:

Malcolm C. Weiss, Esq.
Jeffer, Mangels et al.
2121 Avenue of the Stars, 10th Fl.
Los Angeles, CA 90067

As to ARB:

Kathleen Walsh, General Counsel
Air Resources Board, Office of Legal Affairs
P.O. Box 2815
Sacramento, California 95812

VI. Copies of Order:

This Order has been issued to Jim Michael, Alliance Colton, LLC. Copies of this Order have also been sent to Malcolm Weiss, Counsel for Alliance, Barbara Baird, District Counsel, SCAQMD, and to Kathleen Walsh, Counsel for the California Air Resources Board.

VII. Effect of Order:

The entry of this Order shall not constitute an admission by Alliance of any violation alleged herein nor of any statute or rule.

VIII. Effective Date and Termination of this Order:

The Termination Date of this Order shall be: (1) issuance of final ATCs to Alliance for the Drews and Century Projects and Alliance's submission of source test reports (after installation of LAER/CA-BACT) demonstrating compliance with all emissions limits contained in the final ATCs; (2) failure of Alliance to comply with any term or condition of its applications for ATCs and/or the SCAQMD's draft ATCs, or with any term or condition of an Order of Abatement issued by SCAQMD; (3) failure of Alliance to comply with any term of this Order, or (4) December 15, 2001, whichever is earlier.

Notwithstanding the paragraph above, this Order shall terminate, after notice by EPA, if an imminent and substantial endangerment to the public health, welfare or the environment occurs. This Order shall terminate immediately upon receipt by Alliance of the notice of termination.

IX. Enforcement:

Any violation of this Order may result in a civil judicial action for an injunction and civil penalties up to \$27,500 per day per violation, 42 U.S.C. §7413(b)(2). EPA may also file an action seeking criminal sanctions pursuant to Section 113(c) of the Act. 42 U.S.C. §7413(c).

X. Opportunity for Conference and Effective Date:

Section 113(a)(4) provides that this Order shall not take effect until Alliance has had an opportunity to confer with EPA regarding the alleged violations. Alliance's signature in the space provided below shall constitute its acknowledgment that it has had

sufficient opportunity to confer with EPA prior to issuance of the Order. Alliance's signature also constitutes its agreement to comply with Section IV above.

The undersigned representatives of EPA, ARB and Alliance each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the respective Parties to this Order.

DATE: U.S.E.P.A.

April 25, 2001

_____/s/_____
Jack P. Broadbent, Director
Air Division, Region 9

Acknowledged and Agreed:

DATE: ALLIANCE COLTON LLC

_____/s/_____
By: Vice President

DATE: CALIFORNIA AIR RESOURCES BOARD

_____/s/_____
Mike Kenny, Executive Officer